

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SIMONE T. JORDAN-EL,

Plaintiff,

File No. 2:07-cv-95

v.

HON. ROBERT HOLMES BELL

PATRICIA CARUSO, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER
ADOPTING THE REPORT AND RECOMMENDATION

On January 26, 2009, United States Magistrate Judge Timothy P. Greeley issued a Report and Recommendation (“R&R”), recommending that Plaintiff Simone T. Jordan-El’s 42 U.S.C. § 1983 prisoner civil rights action be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. Plaintiff filed objections to the R&R on February 28, 2009. For the reasons that follow, Plaintiff’s objections are denied and the R&R is adopted as the opinion of the Court.

This Court is required to make a *de novo* determination of those portions of a R&R to which specific objections are made, and may accept, reject, or modify any or all of the Magistrate Judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Defendants filed three motions for summary judgment on March 18, April 8, and

April 15, 2008. (Dkt. Nos. 1, 19, 21.) On March 19, April 21, and May 7, 2008, the Magistrate Judge issued orders requiring Plaintiff to respond to these motions by the dates set forth in the orders, and notifying Plaintiff of the consequences of failure to respond. (Dkt. Nos. 18, 23, 25.) On April 21, 2008, Plaintiff filed a motion for extension of time to respond to the first motion for summary judgment filed by Defendants.¹ (Dkt. No. 24.) The Court granted Plaintiff's motion, giving him until May 21, 2008, to file a response. (Dkt. No. 25.) The Court did not receive a response from Plaintiff to any of Defendants' motions. Over eight months later, the Magistrate Judge issued its R&R recommending dismissal of the case.

In his objections, and in an attached signed statement, Plaintiff asserts that he submitted a response to all of Defendants' motions on April 29, 2008, by submitting them to the prison authorities for mailing. Apparently, all three responses were lost in the mail. Plaintiff offers no contemporaneous evidence of submitting his responses for mailing, such as evidence of mailing, a copy of his responses, or proof of service. Plaintiff asserts that he cannot provide a copy of his responses because, on January 8, 2009, the prison authorities destroyed his legal documents, including copies of his responses, his complaint, and the summary judgment motions. Other than his statement, Plaintiff provides no supporting evidence of this occurrence. Plaintiff does not indicate that he filed grievances regarding this incident, nor does he provide copies of any grievances. Moreover, the Court notes that it granted Plaintiff's motion for extension of time to respond on May 7, 2008, over a week after

¹In his motion, Plaintiff asserted that he needed more time to respond because he was "engaged in preparing and making decisions on other legal matters"

Plaintiff contends that he submitted his responses for mailing; if Plaintiff's responses were lost in the mail, the date of the Court's order should have placed Plaintiff on notice that the Court had not received his responses within a reasonable period of time after he mailed them. Plaintiff could have contacted the Court at any time during the following eight months, prior to the issuance of the R&R, to ensure that his responses had been received. The Court finds that Plaintiff has provided insufficient evidence and explanation to justify his failure to respond to Defendants' motions in accordance with the deadlines set by the Court in this case. Thus, the Court will deny Plaintiff's objections and adopt the R&R.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's objections to the Report and Recommendation of the Magistrate Judge (Dkt. No. 29) are **DENIED**.

IT IS FURTHER ORDERED that the Report and Recommendation (Dkt. No. 28) is **APPROVED** and **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Plaintiff Simone T. Jordan-El's complaint is **DISMISSED** for failure to failure to prosecute pursuant to Fed R. Civ. P. 41(b).

Dated: June 5, 2009

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE